



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 51(1) of the Private Housing
(Tenancies)(Scotland) Act 2016**

Chamber Ref: FTS/HPC/EV/21/1258

**Re: Property at Flat 0/2, 1 South Park Drive, Paisley, Renfrewshire, PA2 6JQ
("the Property")**

Parties:

**Mr Hugh Courtney, 21 Orchard Avenue, Singlewell, Gravesend, Kent, England,
DA11 7NX ("the Applicant")**

**Ms Susan Cardno, Flat 0/2, 1 South Park Drive, Paisley, Renfrewshire, PA2 6JQ
("the Respondent")**

Tribunal Members:

Alison Kelly (Legal Member) and Janine Green (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the
Tribunal") determined that the order for eviction should be granted.**

The Applicant lodged an application on the 26th May 2021 under Rule 109 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Rules"). The Applicant was seeking an eviction order in terms of Ground 14 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016.

Lodged with the application were:-

1. Copy Notice to Leave
2. Copy section 11 Notice
3. Incident Recording Summary Report from Police Scotland

The Tribunal was satisfied that the Notice To leave had been served timeously and correctly.

The papers were served on the Respondent by Sheriff Officer.

On 21st July 2021 the Respondent sent two emails to the Tribunal outlining her position and stating that there had been no complaints since January 2021 and that she has been victimised by neighbours.

On 23rd July 2021 the Applicant sent an email to the Tribunal in response to the Respondent's emails.

Case Management Discussion

The Case Management Discussion ("CMD") took place by teleconference. The Applicant dialled in and represented himself. The Respondent did not dial in and was not represented.

Summary of Discussion

The Chairperson explained the purpose of a CMD, and also addressed the fact that anti social behaviour needed to be proved to establish the ground and also that the Tribunal needed to be satisfied that it was reasonable to grant the order.

The Chairperson explained that the case would need to proceed to a Hearing so that evidence could be heard in relation to the alleged anti social behaviour, and also in relation to reasonableness.

The case was adjourned to a hearing on 20th August 2021 at 10am, to take place by videoconference if possible.

Further Interaction with the Tribunal

Between the CMD and the Hearing there were a series of emails from both Applicant and Respondent to the Tribunal, containing various allegations and counterallegations.

The Applicant lodged statements written by six neighbours and former neighbours, and a window cleaning company.

The Applicant also lodged a transcript he had prepared of excerpts of WhatsApp messaged between the parties between 24th November 2019 and 14th December 2020.

Hearing

The Hearing was due to take place by Webex. This was not possible due to a failure nationally of a server, and it was agreed by all parties that the case would proceed by teleconference.

The Applicant dialled in and confirmed that he was representing himself. He confirmed that he did not have any witnesses that he intended to call to speak to their statements.

The Respondent dialled in and confirmed that she was representing herself. She confirmed that she did not have any witnesses that she intended to call.

The Tribunal explained the ground of eviction which the Applicant was relying on and explained that the Tribunal had to decide if the ground had been established, and if they found that it had they then had to decide if it was reasonable to grant an order for eviction.

The Applicant confirmed that he was relying on the statements lodged, the list of incidents provided by Police Scotland and the Whats App messages.

The Respondent proved to be quite emotional and somewhat confrontational when answering questions, and the Chairperson had to remind her that she had to let other people speak and not talk or shout over them. She said that the neighbours had all ganged up on her and were trying to get her evicted, and that the Applicant was listening to them and not to her.

The Tribunal asked the Respondent about the list of call outs provided by Police Scotland. She accepted that the police had been called on each occasion, but denied that there had been disturbances on every occasion, saying that the neighbours were trying to have her evicted.

The Respondent accepted that on 15th April 2020 she had received a fixed penalty notice, which she described as a “covid fine” for having a friend in her house when it was not allowed.

The Respondent did not accept that she had received a fixed penalty notice on 25th November 2020. She said it must have been issued to someone else in her property at the time. The Respondent said that she had been going through a difficult time and needed to have people around her.

The Applicant wished to have the statements lodged put to the Respondent.

The first statement was by Colin and Chantal Brady, dated 27th July 2021. The Bradys live on the ground floor, directly opposite the Respondent. They alleged that the respondent frequently invited people back to her house after pub closing time, playing loud music and disruption. They alleged that in December 2020 the respondent and her friends kicked in the common close door, which was controlled by a secure entry system, damaging the lock, mechanism and door frame. They said that they later assisted the respondent to repair the damage and fit a new lock, but that the mechanism eventually needed replaced.

The Respondent was asked for her position on the allegations. She said that in December 2020 she had been out at the pub. Mr Brady put the snib on the security door which stopped her from gaining entry. She could not get in, so she had to get one of her friends to boot in the door so that she could get in to the flat. She said that Mr Brady would have told all the other neighbours not to buzz her in if she asked. The Respondent did not seem to think there was anything wrong with forcing the door to the extent that it caused severe damage.

Mr and Mrs Brady further alleged that in January 2021, when no pubs were open, the Respondent would frequently have almost daily 12 hour parties where multiple random people were meeting, fighting and bleeding in the common close.

The Respondent said that she would only have a few friends in at a time. She said there was an incident where her friend started fighting with her own brother and an ambulance had to be called. She denied that there had been any blood in the common close. On further questioning she said that she was the one who had called the ambulance. The only people who had been in the house were the Respondent, her friend and her friend's brother. Her friend had sore ribs after the fight and the Respondent was worried about her. She said that her friend's name was Kerry McGrath, and that she was staying with the Respondent at the time.

There was a further allegation that an incident had taken place on 20th July 2021, when the Respondent's daughter had abused Mrs Brady and another person by calling them "slags".

The Respondent was quite incensed and said that her daughter had nothing to do with the eviction action. She said that in July 2021 she had just come back from the gym when Mrs Brady started shouting at her about her daughter. She was not going to take being shouted at and shouted back.

The Applicant wished the statement of Carla McMenemy to be put to the Respondent. The Tribunal pointed out that the statement was undated, and that it was difficult to work out from it when the alleged events had occurred. The Respondent said that Miss McMenemy lived on the top floor and it would be impossible for her to hear anything, particularly as the fighting had been in her flat and not in the close. The Respondent said that on one occasion Miss McMenemy was cleaning the close in the afternoon and repeatedly banged a broom against the wall of the Respondent's flat for over 20 minutes. The Respondent went out to speak to her about it.

The Respondent had previously referred to friends being in her "bubble", meaning her covid bubble, and she was asked by the Tribunal about this. She said that she had loads and loads of friends. But they did not all come round to visit at the same time, and she sometimes went to visit them.

The Applicant wished the statement of Carole Freitag to be put to the Respondent. It was established that Ms Freitag lives in the next close, but that her flat is through the wall from the Respondent. The statement did not contain any specific allegations, but referred to non-stop partying and get togethers, which were illegal due to the covid restrictions, and Ms Freitag felt that the Respondent had no regard for health and

safety or the law. The Respondent did not accept that she was partying all the time. She said that she thought that the neighbours were passing information to each other and it was all assumptions.

The Applicant wished the statement of Mo Templeton to be put to the Respondent. The statement was dated 1st February 2020. This letter was a complaint to the Applicant about the Respondent's behaviour and complained about noise nuisance from June 2019 onwards including shouting and bawling, and loud club style music. The Respondent said there had probably been a bit of music, but she said that Mrs Templeton's husband was a body builder and had come down to her flat and tried to intimidate her.

The Applicant wished the statement of Claire Cochrane to be put to the Respondent. The statement was undated, but she said that she had moved in to her flat, directly about the Respondent, in December 2020. She said that she had experienced regular noise pollution and general anti-social behaviour. She said that the language that could be heard coming from the Respondent's flat was diabolical. She felt that she did not want to approach the respondent as she sounded threatening and abusive. The Respondent said that the language was not coming from her flat and that Miss Cochrane was clearly exaggerating. She said that there had been no incidents or complaints against her since January 2021.

The Applicant wished the statement of Paul Riley to be put to the Respondent. Mr Riley occupies the flat above and across from the Respondent. He said that he was not directly affected by noise but he did have to bear a share of the costs of repairing the secure entry mechanism when the close door was forced in December 2020. He said that the Respondent had shown no regard for lockdown restrictions, or the health of her neighbours by inviting multiple partygoers to their shared entryway at the height of the pandemic and beyond. The Respondent said that she had fixed the door out of her own pocket.

The Applicant wished the statement from the window cleaning firm, Aperture Services, to be put to the Respondent. This related to an incident on 6th August 2020. The statement said that the window cleaner was cleaning the windows at Flats 2/1 and 1/1 1 South Park Drive, Paisley, when he was subjected to abuse and threats from a female and male occupant of the ground floor flat directly below the other two addresses. They claimed that he had dripped dirty water on to their windows and demanded a free clean. When the window cleaner refused, he said that they called him "specky" and were threatening and abusive. They went back in, and the window cleaner continued with his job, but around 30 minutes later the occupants again began abusing him and threatening him. The Respondent said that she had washed her windows the day before. The window cleaner dripped dirty water on her clean windows and she went out and asked him to clean it off. She said that she used the same tone as she was using to address the Tribunal. The window cleaner was cheeky to her. She did not have anyone else with her. There was no man in her flat. She knew nothing about the second incident and wondered if someone else had come along and abused the window cleaner.

The Applicant wished to refer to the WhatsApp messages he had collated, summarised and lodged. This was in relation to the reasonableness of the eviction.

The Respondent accepted that they were accurate and the messages were exchanged between her and the Respondent. The Applicant said that the messages showed that he had tried to help the Respondent on many occasions and that a Tribunal application was the last thing he wanted. The Respondent said that she did not accept that the Applicant had tried to help her, but she then said that he did give her chance after chance to keep the music down.

The Respondent was asked about her household constitution. She said that she lived at the property with her 14 year old daughter, who went to school locally. Throughout the Tribunal she referred to her daughter spending weekends with her dad. She said that he ex had moved out about two years before.

In some of her emails to the Tribunal the Respondent had mentioned her mental health. She said that she suffered from really bad panic attacks. She felt that she was living in fear of the neighbours and their bullying. This was why she had stated bringing friends round. She was prescribed anti depressants and was awaiting a referral to a Community Psychiatric Nurse.

The Applicant said that he was sympathetic to the Respondent's mental health, and wished he could help, but that the neighbours were living on a knife edge. The Respondent said that she didn't feel safe in the close due to the bullying. She had the deposit saved to take on another tenancy but the Applicant would not give her a reference.

No one had anything else that they wished to add, and the Tribunal was brought to a close.

Findings In Fact

1. The Respondent rents the property from the Applicant;
2. There have been numerous complaints from those occupying neighbouring flats about the anti social behaviour of the Respondent and her visitors;
3. Between 21st March 2020 and 29th January 2021 the police were called to the property on 19 occasions;
4. On 15th April 2020 the Respondent was issued with a fixed penalty notice for breaching covid regulations by having people in her house;
5. On 6th November 2020 the respondent and an unidentified male in her company were verbally abusive to the window cleaner;
6. On 25th November 2020 a fixed penalty notice for breaching covid regulations was issued to someone at the property;
7. On one occasion in December 2020 a fight broke out in the property among the Respondent's guests and she called an ambulance;
8. On one occasion in January 2021 the Respondent and her guests were returning from the pub sometime after 2am and one of them violently forced the close entry door open, causing damage to the lock, mechanism and frame;
9. There have been no reports to the police about the Respondent since the end of January 2021.

Reasons For Decision

The application has been brought using Ground 14 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016, which states as follows:

Anti-social behaviour

14(1)It is an eviction ground that the tenant has engaged in relevant anti-social behaviour.

(2)The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—

(a)the tenant has behaved in an anti-social manner in relation to another person,

(b)the anti-social behaviour is relevant anti-social behaviour, and

(c)either—

(i)the application for an eviction order that is before the Tribunal was made within 12 months of the anti-social behaviour occurring, or

(ii)the Tribunal is satisfied that the landlord has a reasonable excuse for not making the application within that period.

(3)For the purposes of this paragraph, a person is to be regarded as behaving in an anti-social manner in relation to another person by—

(a)doing something which causes or is likely to cause the other person alarm, distress, nuisance or annoyance,

(b)pursuing in relation to the other person a course of conduct which—

(i)causes or is likely to cause the other person alarm, distress, nuisance or annoyance, or

(ii)amounts to harassment of the other person.

(4)In sub-paragraph (3)—

- “conduct” includes speech,*
- “course of conduct” means conduct on two or more occasions,*
- “harassment” is to be construed in accordance with section 8 of the Protection from Harassment Act 1997.*

(5)Anti-social behaviour is relevant anti-social behaviour for the purpose of sub-paragraph (2)(b) if the Tribunal is satisfied that it is reasonable to issue an eviction order as a consequence of it, given the nature of the anti-social behaviour and—

(a) who it was in relation to, or

(b) where it occurred.

(6) In a case where two or more persons jointly are the tenant under a tenancy, the reference in sub-paragraph (2) to the tenant is to any one of those persons.

The Tribunal has to be satisfied that the ground has been established, and if so satisfied, has to decide if it is reasonable to grant the order.

The statements lodged by the Applicant from various neighbours could not be held as fact in and of themselves as the authors were not there to speak to them. However, the Respondent's answers to the various allegations could be assessed by the Tribunal for credibility and reliability. The Respondent's tone throughout was sharp and confrontational. She accepted that certain incidents had taken place, but at no time did she seem at all remorseful, or appear to have any insight as to how her behaviour had affected the neighbours, particularly given the restrictions put in place in relation to the Covid 19 pandemic. The Tribunal did not find the Respondent to be credible or reliable at all. The police were called to her property on 19 occasions during a period when the country was fighting the pandemic and many deaths had been recorded. The Tribunal concluded that it must have been quite frightening for the neighbours to have people who did not live in the property constantly visit, bringing with them an increased risk of contracting the virus. This would be in addition to the disruption caused by the noise.

The tone and content of the WhatsApp messages to the Applicant only reinforce the Respondent's attitude.

The Tribunal had no hesitation in concluding that the Respondent had behaved in an anti social manner to the other occupants of the building and to the window cleaner on numerous occasions.

Most of the anti social behaviour took place within 12 months of the application to the Tribunal being made.

The anti social behaviour caused alarm, distress, nuisance and annoyance to the other occupants, and formed a course of conduct.

Having found that the ground was established, the Tribunal had to consider if it was reasonable to grant the order. The Tribunal considered the Respondent's personal circumstances and those of her daughter. It appeared that her daughter visited her father most weekends, and therefore had another place she could stay while the Respondent looked for other accommodation. As far as the Respondent's mental health is concerned she disclosed that she was being treated with anti depressants. She also said that she did not feel safe in the close and felt bullied by the neighbours. The Tribunal also took note of the fact that there had been no incidents reported to the police since the end of January 2021. However, there had been an incident in July 2021. The Tribunal did not think that any of these factors made the granting of an eviction order unreasonable.

The main factor considered by the Tribunal when assessing reasonableness was that the behaviour of the Respondent was exacerbated by the fact that it took place during an unprecedented global pandemic, when the general public were asked to behave cautiously and with regard for others. The Respondent told the Tribunal that she was going through a bad time and needed people round. She did not seem to think that this would be unacceptable to the other occupants. She was given a fixed penalty notice in April 2020 but this did not have any effect on her behaviour.

The Tribunal concluded that the anti- social behaviour was relevant anti-social behaviour and that it was reasonable to grant the order.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Alison Kelly

23/08/2021

Legal Member/Chair

Date